

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VICKI CAPRIO and DUANE A. BARBAROTTO
as decedent Nicholas J. Barbarotto's
Successors in Interest,

Plaintiffs,

v.

HARTFORD LIFE INSURANCE COMPANY dba
THE HARTFORD and HARTFORD LIFE AND
ACCIDENT INSURANCE COMPANY,

Defendant.

No. C 08-338 CW

ORDER GRANTING
DEFENDANTS'
MOTION TO DISMISS
WITH LEAVE TO
AMEND

Defendants Hartford Life Insurance Company and Hartford Life
and Accident Insurance Company move to dismiss the complaint filed
against them by Plaintiffs Vicki Caprio and Duane A. Barbarotto.
Plaintiffs oppose the motion. The matter was taken under
submission on the papers. Having considered all of the papers
filed by the parties, the Court grants Defendants' motion to
dismiss with leave to amend.

BACKGROUND

On June 7, 2007, Plaintiffs filed the complaint in this case, alleging that they are Nicholas Barbarotto's (Nicholas) successors in interest and bring their claims on that basis. Plaintiffs allege that Defendants issued an accidental death policy covering Nicholas and his wife Tamara Barbarotto (Tamara) and a separate accidental death policy covering only Tamara. Tamara was injured in an accident on July 2, 2002 and died as a result of those injuries on October 19, 2002. Plaintiffs allege that Nicholas filed timely claims under the policies but Defendants "failed to conduct a reasonable investigation and acted unreasonably, arbitrarily and capriciously in denying the claims." Complaint ¶ 16. Based on those allegations, Plaintiffs bring claims for breach of contract, breach of the duty of good faith and fair dealing and violation of the Employee Retirement Income Security Act (ERISA).

DISCUSSION

Res judicata, or claim preclusion, prohibits the re-litigation of any claims that were raised or could have been raised in a prior action. Western Radio Servs. Co., Inc. v. Glickman, 123 F.3d 1189, 1192 (9th Cir. 1997) (citing Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398 (1981)). The purpose of the doctrine is to "relieve parties of the cost and vexation of multiple law suits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." Marin v. HEW, Health Care Financing Agency, 769 F.2d 590, 594 (9th Cir. 1985) (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)). Res judicata

1 operates where there is "1) an identity of claims, 2) a final
2 judgment on the merits, and 3) identity or privity between
3 parties." Western Radio, 123 F.3d at 1192 (citing Blonder-Tongue
4 Lab. v. University of Ill. Found., 402 U.S. 313, 323-324 (1971)).

5 Defendants argue that Plaintiffs' claims are barred based on
6 the doctrine of res judicata because a suit based on the same
7 insurance claims was filed in this District naming Nicholas as
8 plaintiff on February 22, 2006 (Nicholas Barbarotto v. Hartford
9 Life Insurance Company, C 06-1278 CRB). This case was filed by
10 counsel for Plaintiffs in the present case. On October 19, 2006,
11 Judge Breyer entered an order pursuant to the parties' stipulation
12 dismissing the 2006 suit with prejudice. Plaintiffs do not dispute
13 that the 2006 suit and this suit involve the same insurance claims.
14 Instead, Plaintiffs argue that the 2006 suit is a judicial nullity
15 because it was filed after Nicholas died on February 14, 2006.
16 Therefore, Plaintiffs argue, the dismissal of the 2006 suit is not
17 a valid judgment for purposes of res judicata.

18 In Banakus v. United Aircraft Corporation, 290 F. Supp. 259
19 (S.D.N.Y. 1968), the plaintiff was injured in an airplane crash.
20 Approximately half-an-hour before his attorney filed the complaint
21 in the action, the plaintiff died. Plaintiff's wife, as
22 administrator of his estate, filed a motion to amend the complaint
23 to add a claim for wrongful death and to substitute herself as
24 plaintiff. The New York court found that, because the plaintiff
25 was dead when the action was filed, "it must be treated as a
26 nullity and it cannot be given life by substituting parties and
27 amending the complaint." Id. at 260. Therefore, the court denied
28

1 plaintiff's wife's motion without prejudice to her filing a
2 wrongful death action.

3 Defendants argue that Banakus is distinguishable because
4 Plaintiffs did not attempt to substitute themselves as plaintiffs
5 in the 2006 suit. However, the Banakus court did not allow the
6 plaintiff's wife to substitute herself as the plaintiff.

7 Defendants also argue that Banakus is distinguishable because
8 "plaintiffs have brought an identical action as successors in
9 interest, and seek no new claims for relief." Reply at 4.

10 However, Plaintiffs' complaint includes a claim under ERISA, which
11 the 2006 suit did not. Moreover, Banakus is not binding authority
12 on this Court and it is not clear that the addition of a new claim
13 for relief was a key factor in the Banakus court's decision.

14 Defendants also cite Esposito v. United States, 368 F.3d 1271
15 (10th Cir. 2004), in support of their argument that the 2006 suit
16 was not a nullity. In Esposito, the Tenth Circuit reversed the
17 district court's dismissal of a wrongful death claim, which was
18 mistakenly filed with the decedent as plaintiff, and its denial of
19 the decedent's wife's motion to substitute as plaintiff. Both
20 Esposito and Banakus permitted the decedent's representatives to
21 pursue the decedent's claims.

22 Nonetheless, as Defendants argue, the three elements of res
23 judicata are met in this case. Plaintiffs seek to bring claims
24 identical to those dismissed with prejudice in the 2006 litigation.
25 Moreover, there is privity between Nicholas and Plaintiffs, acting
26 as his successors in interest. See Headwaters Inc. v. United

1 States Forest Serv., 399 F.3d 1047, 1053 (9th Cir. 2005) (privity
2 exists between individuals and their successors in interest). Res
3 judicata is not a discretionary doctrine. See Southern Ry. Co. v.
4 Clift, 260 U.S. 316, 319 (1922) (noting that res judicata
5 "supersedes [discretion] and compels judgment"). Although the 2006
6 suit did not include an ERISA claim, the ERISA claim in this case
7 is also barred by res judicata because it could have been brought
8 in the 2006 suit.

9 If Plaintiffs wish to pursue these claims, they must seek a
10 judicial determination that the judgment entered in the 2006 suit
11 is void because the case was a nullity when filed.


12 CONCLUSION

13 For the foregoing reasons, the Court GRANTS Defendants' motion
14 to dismiss (Docket No. 3), and grants Plaintiffs leave to amend.
15 If Plaintiffs wish to file an amended complaint in this case, they
16 shall within ten days of the date of this order file in the 2006
17 suit a motion to void the judgment pursuant to Federal Rule of
18 Civil Procedure 60(b). Plaintiffs shall include in their motion
19 facts related to Nicholas's death and the subsequent filing of the
20 lawsuit in his name. In the interest of judicial economy,
21 Plaintiffs shall also file a notice of related cases suggesting
22 that Judge Breyer re-assign the 2006 suit to this Court. If the
23 2006 case is dismissed as a nullity, Plaintiffs may within ten days
24 thereafter file an amended complaint in this case alleging that the
25 2006 case has been voided. In that event, they shall contact the
26 clerk for a case management conference date. Otherwise, the

1 dismissal of this complaint will stand. The case management
2 conference currently scheduled for April 22, 2008 is hereby
3 vacated.

4 IT IS SO ORDERED.

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6 Dated: 4/15/08



CLAUDIA WILKEN
United States District Judge